is referring to,[57] and SBC is not aware of anyone who claims that one out of every three innerducts must be reserved as a maintenance spare. For example, in Multimedia Cablevision, the Commission allowed one spare maintenance duct out of about every seven ducts.[58] Thus, it should be sufficient if one full duct is reserved in each conduit run. AT&T is opposing a proposal (one out of every three innerducts) that no one has made, which is why its arguments are irrelevant.[59]

Municipal requirements can also render space unusable for utility or attacher purposes.[60] Therefore, it is appropriate to set aside another duct for municipal purposes in any state where such requirements are prevalent.

VII. THE COMMISSION SHOULD NOT ESTABLISH SPECIAL RATES FOR NON-STANDARD ATTACHMENTS IN THIS PROCEEDING.

AT&T, MCI and TCI urge the Commission to adopt a variety of special rates or exceptions for non-standard attachments. For example, MCI urge the Commission to develop

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[57] SBC is aware of one cable operator that previously has argued in favor of the ½-duct method, but this cable operator did not advocate setting aside one out of every three innerducts as maintenance spares. See Multimedia Cablevision , ¶21.

[58] Multimedia Cablevision, ¶¶23-24.

[59] To support its argument that the maintenance spare should be very limited, AT&T claims that SWBT has agreed to allow "any unassigned innerducts to be used by AT&T and other entrants." AT&T at 23. By the stipulation referenced by AT&T, SWBT did not agree to forego the assignment of a spare maintenance duct. Further, under SWBT's standard pole attachment agreement(§3.18), the spare maintenance duct is available for use by the attacher on a short-term basis for purposes of the attacher's maintenance and repair activities.

[60] See Ameritech at 7.

separate formulas for buried conduit and electric utility transmission towers.[61] While MCI wants the Commission to address transmission tower attachment rates through a further notice of proposed rulemaking, it seeks the adoption of a separate buried conduit formula as part of the Commission's initial ruling on this NPRM. The Commission need not adopt special formulas for every conceivable type of utility structure that may be subject to Section 224, especially if these structures are seldom used by attachers. There will always be some structures that do not meet all of the criteria of the typical pole or conduit. For example, "spot poles" generally do not require the same ground clearance as the average pole, but for the sake of simplicity, the rate can be determined using the same standard formula. This should be true for buried conduit. Unique or nonstandard structures that are subject to Section 224 can be addressed initially through negotiation or, if necessary, the complaint process. If their use expands, then the Commission can revisit the need for a generally applicable modified formula at that time.

AT&T claims that it should be allowed to place multiple attachments in the same vertical foot of space while paying a single attachment rate. The terms and conditions and the manner of using the foot of space is an operational issue best worked out between the parties themselves. This is primarily an access issue. That is, the issue is whether there are valid engineering reasons for limiting the number and type of attachments and for requiring clearance between strands attached to a pole. Such access issues are to be decided under the guidelines the Commission

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[61] MCI at 21-27. When MCI refers to buried facilities, SBC assumes it is referring to buried conduit which is capable of accommodating additional attachments.

provided in the Local Competition Proceeding.[62] Among the issues to be considered is that Section 224 does not divest the utility of its ownership interest in the one foot of vertical space that Congress presumed an individual attachment would occupy.[63] Once the access issue is determined (which is not properly done in this proceeding), then the rate regulations can be applied to the resulting circumstances.

The "dual-sided" attachments and brackets discussed by AT&T are used in unusual situations. The xeroxed photos in the Appendix to AT&T's Comments are misleading because, typically, poles do not have dual-sided attachments or brackets. If one took pictures of a random sample of attachments, one would find that an insignificant portion of all attachments are nonstandard. One reason that nonstandard attachments are disfavored is that they increase construction costs, for instance by making overlashing operations difficult and costly. In effect, nonstandard attachments potentially can interfere with use of space beyond the one foot of assigned space.

AT&T cites the Bellcore "Bluebook-Manual of Construction Procedures" in support of its contention that dual-sided attachments, pole brackets and the like "are already commonly employed by pole owners today."[64] However, the Bellcore Bluebook actually reflects that dual-sided attachments are the exception. The Bluebook also explains that these types of procedures are permissible "provided the diagonal clearance is 12 inches (300cm) and a minimum of 4

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[62] E.g., Local Competition Order, ¶1186.

[63] See Adoption of Rules for the Regulation of Cable Television Pole Attachments, CC Docket No. 78-144, 72 F.C.C. 2d 59, 70 ¶24 (1979).

[64] AT&T at 6.

inches (100cm) between bolt holes is maintained."[65]

AT&T's discussion of multiple attachments per foot ignores the operational problems created by such arrangements. For example, at least 12 inches of separation is needed between cables for spinning/overlashing procedures. Safety is also a concern with dual-sided attachments and brackets. Cables on brackets that are positioned one foot out from the pole impede the working space of cables on the same side of the pole both at the same height and those with only one foot of vertical separation.

AT&T also discusses use of pole attachment space for wireless facilities. AT&T requests special treatment of wireless facilities in that it apparently believes that the utility should not be able to charge AT&T anything for a wireless attachment if the same space can be shared by other attachers.[66] Requiring utilities to provide free pole attachment space would be a gross violation of Section 224, among other things.[67]

It would be premature to decide how to apply the pole attachment formula to wireless facilities, given that placement of such facilities on poles pursuant to Section 224 is still an open issue in the Local Competition Proceeding.[68] Until the Commission decides whether Section 224

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[65] Bluebook, ¶3.2.

[66] AT&T at 9.

[67] Besides, the suggestion that multiple attachers should be allowed to share the same space is objectionable because the utility should be able to control or restrict any sublicensing or space sharing arrangements. The utility has legitimate concerns regarding potential liability. In addition, attachers should not be able to obtain a profit by subdividing and sublicensing space at aggregate rates that exceed what the utility is allowed to charge.

[68] Petition for Reconsideration and/or Clarification of American Elec. Power Service Corp., Local Competition Order, CC Docket No. 96-98, filed Sept. 30, 1996. Wireless

applies to wireless facilities, it is not necessary to consider adoption of special procedures for such attachments.

TCI suggests that the Commission should promote cost sharing arrangements in the construction of new facilities and other similar arrangements.[69] However, TCI does not explain what the Commission should do to promote such cooperative behavior. Section 224(h) already provides for such cost sharing arrangements and the Commission addressed this provision in the Local Competition Order.[70] Since this proceeding is focused on the recurring rental rate, consideration of cost sharing issues is beyond its scope. To the extent it becomes necessary to address cost sharing or issues relating to nonstandard attachments, the Commission can always issue another rulemaking notice at that time.

VIII. THERE IS NO DOUBLE RECOVERY AS CLAIMED BY MCI.

MCI claims that utilities obtain a double recovery when they incur investment costs to create additional capacity required by an attacher.[71] According to MCI, if the utility charges the attacher for the investment costs as part of the make-ready charges and also rents the additional capacity to other attachers, then the utility will have recovered its costs twice.[72] However, under

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facilities should not be considered pole attachments for purposes of Section 224's mandatory access requirements, given that wireless facilities can be placed in a number of different locations, such as the walls and rooftops of buildings or on billboard structures.

[69] TCI at 23-24.

[70] Local Competition Order, ¶¶1211-1216.

[71] MCI at 6-8.

[72] Id. at 7.

proper accounting by a utility, double recovery under such circumstances would not occur because the investment costs that are reimbursed by the requesting attacher are not added to the investment account. For example, when SWBT replaces a pole at the request of an attacher, the work is authorized on what is called a "Custom Work Order" ("CWO"). By using a CWO, the replacement costs reimbursed by the attaching party are not booked to the SWBT pole investment account. As a result, the reimbursed pole replacement costs are not factored into the pole attachment rate and there can be no double payments. Therefore, the Commission should reject MCI's suggestions that utilities not be allowed to charge requesting attachers for the pole replacement costs attributable to their requests for additional space.[73]

IX. THE COMMISSION'S PROPOSED CONVERSION OF THE ADMINISTRATIVE CARRYING CHARGE FROM PART 31 TO PART 32 ACCOUNTS IS PROPER.

While most commenters either support or do not oppose the proposed conversion of the administrative carrying charge from Part 31 to Part 32 accounts, Time Warner and NCTA object to the inclusion of certain administrative expense accounts.[74] Time Warner contends that Account 6110 and 6534 should not be included because "[i]f there are any pole related expenses in these accounts, we believe their proportion to be extremely small."[75] Time Warner misunderstands the method used to calculate the administrative carrying charge because it is determined on a total plant investment basis. If the administrative carrying charge were

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[73] Besides the fact that there is no double recovery, the Commission already rejected a similar contention in the Local Competition Order, ¶¶1216.

[74] NCTA at 28-36 and Declaration of Patricia D. Kravtin; Time Warner at 25.

[75] Time Warner at 25.

determined based on pole investment only, then it would be appropriate to consider whether the administrative expenses in question related to poles. However, when the administrative carrying charge is determined by the ratio of total administrative expenses to total plant investment, it would not be proper to exclude certain categories of administrative expenses on the grounds that they are not pole related.[76] Accordingly, as the NPRM reflects, the test for determining which administrative expenses to include is not whether they are pole related, but, instead, whether they are "non-project specific expenses of an administrative and general nature."[77]

The NPRM has properly identified the accounts containing administrative and general expenses that do not solely benefit specific projects. In fact, by excluding administrative expenses relating to specific projects, the NPRM's proposal is under-inclusive because the denominator of the administrative carrying charge ratio includes all plant investment. Given that all plant investment is included, all administrative expenses directly or indirectly associated with that plant should be included in the numerator. For example, the NPRM proposes to include Account 6110, Network support expenses, which includes Account 6112, but expenses relating to specific projects or chargeable to specific plant accounts are cleared out of Account 6112. Therefore, the amount remaining in Account 6112 is the "non-project specific expense" of motor vehicles.

In an argument similar to Time Warner's, NCTA objects to "the inclusion of four

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[76] 1987 Report and Order, ¶¶26-37.

[77] NPRM, ¶31.

additional accounts that have little or no relation to administration of the pole resource . . .."[78] What NCTA ignores is that it matters not whether the administrative expense has any relationship to poles; rather, we are trying to determine the relative magnitude of administrative expenses in general to the total investment in plant. Therefore, like-kind figures must be used in the numerator and denominator of this ratio.

Similarly misplaced are NCTA's objections to the inclusion in the numerator of specific types of administrative costs such as "cost for formulation of corporate policy and long-term economic and strategic planning."[79] If such objections are going to be applied to the numerator of the formula, then equivalent objections must be made to the investment included in the denominator of the formula. In other words, if certain categories of administrative expenses are going to be excluded from the numerator, then certain types of plant investment should be excluded from the denominator of the ratio.

NCTA makes a number of other specific objections to the NPRM's proposal. SBC does not attempt to address each of these arguments because by applying the NPRM's general criteria for determining what constitute administrative and general expenses that benefit telephone company plant, the Commission reaches a reasonable result without the necessity of considering in detail the nature of each type of administrative expense included in the numerator or the ratio. However, SBC will address a few of NCTA's specific arguments.

On one hand, NCTA correctly recognizes the difficulty of mapping the Part 31 Accounts

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[78] NCTA at 30.

[79] Id. at 29.

to their Part 32 equivalents,[80] while, inconsistently, it argues that Part 32 Accounts 6710 and 6720 are the "precise analogs to Part 31 account groupings of non-plant specific administrative overhead."[81] On this basis, NCTA contends that the administrative element consists of Accounts 6710 and 6720 and that "there has been little dispute" over this fact. SBC disagrees. However, instead of debating the problematic mapping from Part 31 to Part 32, SBC submits that it is best to take a fresh look at the Part 32 Accounts without reference to Part 31 and to ascertain which Part 32 Accounts are of a general and administrative nature.[82]

NCTA argues that Account 6535, Engineering Expense, should not be included because "whenever any engineering work associated with pole attachments must be preformed, that work is billed on an incremental, per-event basis."[83] Again, because the administrative element is focused on total plant, pole-related objections are misplaced. Further, even assuming a pole-specific analysis, reimbursable administrative expenses are not limited to "engineering work associated with pole attachments." Administrative expenses of the entire pole must be considered because a subsequent step in the formula will prorate that expense among the

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[80] Id. at 26.

[81] Id. at 28.

[82] There has been dispute over which accounts to include in the administrative element. See, e.g., Multimedia Cablevision, 11 FCC Rcd 11202 ¶¶29-31 (determining that Account 6535 expenses should be included in the administrative element); UACC Midwest, v. South Central Bell Telephone Company, 10 FCC Rcd 10905, ¶¶17-19 (determining that Account 6535 and Account 6124 expenses should be included in the administrative element). Also, the Common Carrier Bureau has provided guidance indicating that expenses other than 6710 and 6720 should be included in the administrative element. Id.; Letter, 5 FCC Rcd 3898 (June 22, 1990).

[83] NCTA at 33.

attachments. This NCTA argument also ignores that the Commission previously determined that it was appropriate to include Account 6535 expenses in the administrative charge.[84] Contrary to NCTA's claim that there is a double recovery of engineering because of per-event (i.e., make-ready) charges, there would not be any charges associated with engineering work that remains in Account 6535 after amounts are cleared that are directly chargeable to specific undertakings or projects (such as these make-ready projects).

NCTA also complains of alleged over-recovery of administrative expenses because, it argues, the nature of pole attachments is such that they do not require "the same proportional amount of administrative oversight as a switch or a competitive response to a CLEC."[85] NCTA notes, for example, that research and development expenses would not be as high for poles as for high-tech items. Of course, to compare poles to the most heavily administered parts of the telephone company operations is misleading. Obviously, the comparison should be to the average components of the telephone company operations. SBC submits that poles require as much or more administration as the average components of the business.[86]

NCTA also tries to justify limitation of the administrative charges by claiming, like AT&T, that incremental cost is a sufficient standard. SBC previously explained why incremental cost is not the standard that should govern this proceeding.[87] Under the approach to

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[84] See, Multimedia Cablevision, ¶31; UACC Midwest, ¶17.

[85] NCTA at 27.

[86] SBC at 8-9 & n.15.

[87] See Section II above.

pole attachment complaints that focuses on the maximum rate under the Pole Attachment Act, fully allocated costing is the standard. By arguing that, under an incremental cost approach, the accounts to be included are properly limited, NCTA impliedly admits that Account 6710 and 6720 alone would not result in a rate that fully covers all of the administrative expenses attributable to poles.

NCTA also contends that the NPRM's proposal "will *double* the administrative expenses and the administrative carrying charge."[88] SBC does not agree that administrative charges would significantly increase, let alone double, as a result of the NPRM's proposal in a typical jurisdiction. First of all, NCTA's example of Bell Atlantic Maryland treats Account 6535 as an addition to the administrative charges, but previous Commission interpretations had already included this component.[89] In addition, SBC does not find the same degree of impact on its operating telephone companies' administrative charges. For example, as shown in Exhibit "A", in Kansas, SWBT's total administrative charges in the numerator would go from $120 million to $ 155 million, an increase of 29%. This figure is far short of the 100% increase claimed by the NCTA. Besides this correction is justified because, as discussed previously, utilities like SWBT are under-recovering administrative expenses due to the net salvage problem.

In conclusion, NCTA has not provided sufficient proof that the actual relationship

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[88] NCTA at 30.

[89] Id. at 30 and Exhibit 13 (not 14, as indicated on page 30). While NCTA contends that the administrative charges increase 100%, it points out that the rate itself only increases by 10%. Given that a much more modest increase would be more typical, the impact on the rate should be less than 3%.

between (1) the ratio of pole administrative expenses to pole investment and (2) the ratio of total administrative expenses to total plant investment requires the exclusion of items that are properly considered non-project specific administrative expenses. Therefore, the Commission should adopt the Part 32 administrative carrying charge, as proposed in the NPRM.

X. THE COMMISSION SHOULD ESTABLISH REASONABLE RESTRICTIONS ON THE FILING OF COMPLAINTS,

In its original Comments, SBC recommended that the Commission adopt certain presumptions of reasonableness to minimize the burden of complaints.[90] Other commenters likewise presented worthwhile suggestions concerning the complaint process. For example, US WEST suggested that "the Commission should do nothing in this or any subsequent pole attachment proceeding to upset the balance between privately negotiated agreements and Commission dispute resolution."[91] As SBC understands US WEST, it is not suggesting that the Commission "do nothing;" rather, it is urging the Commission to define its role as a limited one in the case of privately negotiated agreements. If an attacher enters into an agreement without any protest, it should not subsequently be permitted to file a complaint challenging the rate contained in that agreement. This would indeed be a change in the Commission's approach because the Commission previously has assumed that the utility had a "superior bargaining position" and failed to respect the rates contained in privately negotiated agreements.[92]

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[90] SBC at 41-42.

[91] US WEST at 8.

[92] See, e.g., TCA Management Co. v. Southwestern Public Service Co., CC Docket No. 95-84, 10 FCC Rcd 11832 ¶¶14-15(1995). See also 1987 Report and Order, ¶77.

Consistent with the Eighth Circuit's recent ruling in Iowa Utilities Board[93] and Section 224(e)'s express deference to private negotiation,[94] the Commission should permit and honor private negotiation of pole attachment arrangements.

If disagreements do arise when agreements are being negotiated or when rates are increased, SBC urges the Commission to adopt BellSouth's suggested enhancement to the pre-complaint resolution and settlement requirements.[95] The Commission should insist as a mandatory pre-requisite to the filing of a complaint that the complainant certify under oath that it has communicated with the utility concerning each and every disputed issue contained in the complaint and stating that either the utility has not responded within a reasonable period of time (specified in the rule) or the specific reasons why the utility's response was not satisfactory to the complainant. Adoption of the US WEST and BellSouth suggestions, as well as SBC's previously recommended presumptions of reasonableness,[96] should help avoid any waste of the Commission's time and resources resolving non-meritorious or hastily filed complaints. This would make much more efficient use of the parties' and Commission resources.

XI. THE COMMISSION NEED NOT ADOPT ANY SPECIAL RULES CONCERNING MAKE-READY FEES AND OTHER NON-RECURRING CHARGES.

Some commenters state or implied that the Commission should adopt requirements

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[93] Iowa Utilities Board v. FCC, Case Nos. 96-3321 *et seq.*, slip op., § II(B) (8th Cir. July 18, 1997)("Iowa Utilities Board").

[94] 47 U.S.C. §224(e)(1) ("when the parties fail to resolve a dispute over such charges").

[95] BellSouth at 4-5.

[96] SBC at 41-42.

concerning make-ready fees and other non-recurring charges.[97] For example, ALTS suggests that the Commission limit the charges that may be imposed. SBC submits that the existing complaint process is sufficient to address unreasonable nonrecurring charges. The mere threat of complaints is sufficient to discourage unreasonable behavior. Further, the Commission can determine the reasonableness of nonrecurring charges on a case-by-case basis if any complaints are filed that dispute such charges. The Commission should not restrict the right to recover reasonable nonrecurring charges because, under Section 224(i), utilities have the right to charge costs to the party to whom the costs are attributable. In addition, in its previous pole attachment rulings, the Commission has recognized the validity of reasonable nonrecurring charges.[98]

XII. THE COMMISSION SHOULD NOT APPLY ITS TELRIC PRICING METHODOLOGY TO POLES OR CONDUIT.

A few comments suggest that the Commission use an approach similar to the forward-looking cost model adopted for unbundled network elements ("UNEs") in the Local Competition Proceeding, CC Docket No. 96-98.[99] While SBC believes that a formula based upon current or replacement costs could make up for some of the short fall in recovery under the existing historical cost formula, SBC opposes application of the Commission's TELRIC pricing method to poles or conduit. First of all, the 1996 Act does not necessarily support using the same pricing standards for poles and conduit as for UNEs. Pricing standards for UNEs are set forth in Section 252(d). In contrast, Section 251(a)(4) sets forth the "duty to afford access to poles, ducts,

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[97] See, e.g., ALTS at 2-4;MCI at 6-8.

[98] See 1987 Report and Order, ¶¶38-44.

[99] See, e.g., American Electric at 4-6; Edison Electric Institute at 15-16.

conduits and rights-of-way . . . on rates, terms, and conditions that are consistent with Section 224."[100] Accordingly, Section 251(a)(4) incorporates the pricing standards contained in the Pole Attachment Act.[101] Therefore, it was the apparent intent of Congress to retain the preexisting pricing standard for poles and conduit, except to the extent that Section 224 itself was revised by the 1996 Act.

Aside from the existence of separate statutory pricing standards, SBC submits that Commission use of a TELRIC model for poles and conduit would unduly complicate pole and conduit pricing as well as the complaint process. As a practical matter, it is preferable to retain the existing approach, except for refinements adopted in this proceeding, future changes required by Section 224 and potential consideration of the shortfall in recovery compared to current or replacement costs.[102] In addition, SBC does not agree with the Commission's TELRIC methodology and it is not necessary to resort to this methodology for purposes of Section 224 given the existence of a long-standing, relatively simple formula for calculating pole attachment rates.

Finally, because the Commission has always construed Section 224 as allowing utilities to charge a maximum rate that approximates fully allocated costs, it would be inappropriate to suddenly reverse course and use an incremental cost approach, especially given that the statutory

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[100] 47 U.S.C. §251(a)(4).

[101] Cf. Local Competition Order, ¶1237.

[102] See SBC at 23-24. Of course, in states that assume jurisdiction of pole attachments, the state regulator is free to use any reasonable method and should not be limited or guided by any federal pricing standards.

provisions support the retention of the general pole attachment pricing methodology (with some enhancements).[103]

XIII. A UNIFORM 11.25% RATE OF RETURN SHOULD BE ALLOWED.

Several commenters support the Commission's proposal to use the 11.25% rate of return on interstate services as the rate of return for pole attachments.[104] In its Comments, SBC recommended that the Commission allow utilities to use 11.25% across the board, even in states that continue to set a rate of return. By allowing uniform use of 11.25%, rate of return would no longer be a disputed issue in complaint proceedings.[105] A couple of commenters argue that the rate of return should be lower than 11.25% in some cases based on the utility's actual realized rate of return or forward-looking cost-of-capital determinations in state arbitration proceedings.[106] NCTA's suggestion to use the lower of 11.25% or the actual realized rate of return would significantly complicate pole attachment complaint proceedings because the parties would litigate the proper figure to use as the actual realized rate of return and the calculations

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[103] NCTA's reliance on the Local Competition Proceeding to support its contention that the Commission need not allow utilities to recover certain categories of pole-related costs is also misplaced. The incremental cost approach used for UNEs is not necessarily applicable to poles and conduit under Section 224. See, NCTA at 31-32 & Declaration of Patricia D. Kravtin at 11-13.

[104] See, e.g., Bell Atlantic/NYNEX at 7-8; Consolidated Edison New York at 14-16; MCI at 20-21.

[105] SBC at 22-23.

[106] AT&T at 20-21; NCTA at 38-39.

required to support that figure.[107] SBC submits that the difference between 11.25% and the actual realized rate of return is not sufficient to justify the burden of establishing the actual rate of return in each individual case.

AT&T likewise suggests a complex method of determining the return component for pole attachments. Basically, it argues for using the lower of an updated interstate rate of return or "utility-specific forward-looking cost-of-capital determinations" in state arbitration proceedings. Further, AT&T does not believe that 11.25% should be used at all; instead, it refers to a "White Paper" filed in the Local Competition Proceeding as a source of interim data for the rate of return. AT&T's suggested method would lead to prolonged debate concerning the rate of return each time a utility adjusted its pole attachment rates.[108] The Commission should reject AT&T's complicated and dispute-generating method.

When a state has not undertaken regulation of pole attachments, it is entirely proper for the Commission to use its own interstate rate of return in ruling on complaints pursuant to Section 224.[109] Therefore, the Commission should adopt the simplest rate-of-return method for

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[107] For example, there would be debate whether to use a total company or state-specific figures as well as other issues.

[108] For example, the Missouri arbitration decision cited by AT&T established only interim rates and further proceedings are being conducted to establish permanent rates. See Order Granting Clarification and Modification and Denying Motion to Identify and Motions for Rehearing, Case Nos. TO-97-40 and TO 97-67 at 9 (Mo. PSC Jan. 22, 1997). Thus, use of an interim rate of return for pole attachments based on interim ruling would be problematic. See Alabama Power, 773 F.2d at 371-72. Besides, this rate of return was established for the limited purpose of this interconnection arbitration under Section 252 of the 1996 Act.

[109] See Bell Atlantic/NYNEX at 8.

pole attachments by allowing utilities to use 11.25% across the board, even when there is a recent state determination of the utility's rate of return for some state regulatory purpose.[110]

XIV. TELEPHONE UTILITIES SHOULD BE PROTECTED FROM EXCESSIVE POLE ATTACHMENT RATES.

One electric utility commenter notes that when ILECs use pole attachments, they must pay market rates because the 1996 Act's amendments to Section 224 "specifically exempt ILECs."[111] SBC concurs with the conclusion of USTA's comments on this issue that ideally the pole attachment complaint process should apply to the rates that ILECs pay electric utilities. ILECs are especially in need of this protection when the electric utility has also become a telecommunications carrier that may avail itself of the protection of Section 224 in using the ILEC's pole facilities. However, SBC is concerned that the rationale underlying USTA's conclusion may be inconsistent with Section 224.

Even if the Commission does not agree with USTA's argument to apply Section 224 to all rates ILECs pay for use of electric utility pole facilities, Section 224, if correctly construed, would provide some protection to ILECs when they enter new markets as competitive local exchange carriers. Section 224(a)(5) excludes from the definition of "telecommunications carrier" any ILEC "as defined in Section 251(h)." Section 251(h)'s definition of ILEC is area-specific, that is, it is dependent upon the carrier's provision of telephone exchange service in a particular geographic area. Consistent with the Section 251(h) definition, the exemption in

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[110] As SBC noted in its Comments, the Commission has adopted a uniform 11.25% return component for purposes of its affiliate transaction rules. SBC at 22-23.

[111] American Electric at 26.

Section 224(a)(5) should also be construed as an area-specific exemption that only applies to the areas where the ILEC either is the incumbent or in the future becomes an incumbent. Under this reasonable interpretation, when an ILEC obtains access to utility poles outside of the area where it is the incumbent, it would be entitled to the protection of Section 224 and the Commission's pole attachment complaint process.

While SBC prefers the broader protection advocated by USTA, SBC suggests that, at a minimum, the Commission should confirm the above interpretation of Section 224(a)(5).

XV. THE COMMISSION SHOULD REJECT SUGGESTIONS TO IMPOSE OTHER UNNECESSARY REQUIREMENTS.

WorldCom urges the Commission to adopt a "most favored nation" treatment of access to poles, ducts, conduit, and rights of way to ensure that the access rates which are negotiated with one party would be available to any other party.[112]

Adoption of WorldCom's position is unnecessary since the pole attachment formula is, for the most part, a "most favored nation" treatment of access rates. A wholesale application of WorldCom's "one size fits all" approach, however, is inconsistent with the provisions of Section 224 which contemplate and encourage negotiated agreements.[113] For example, Section 224(e)(1)

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[112] WorldCom at 7.

[113] In the context of its decision concerning the Commission's "pick and choose" rule in Iowa Utilities Board, the Eighth Circuit determined that the 1996 Act reflects a Congressional preference for voluntarily negotiated interconnection agreements. Iowa Utilities Board, slip op., § II(B). If a pole attachment agreement were negotiated as part of an interconnection agreement, the ruling in Iowa Utilities Board would be directly applicable. In the case of stand-alone pole attachment agreements, this ruling weighs heavily in favor of construing Section 224 as also promoting negotiated agreements.

states that the regulations to be developed for attachments used by telecommunications carriers will apply only "when the parties fail to resolve a dispute over such charges." Thus, the parties must first attempt to negotiate rates before seeking Commission intervention. An ability to negotiate rates presumes that rates might differ in some cases depending on the circumstances of attachment and the terms of the individual agreements. Such differences would not be discriminatory if similar terms and conditions were offered in similar circumstances.[114]

In addition, Section 224(d)(3) states that the formula to be used by the Commission to determine whether rates are just and reasonable will apply to any attachment by a telecommunications carrier "to the extent such carrier is not a party to a pole attachment agreement." Section 224 therefore does not require the termination of preexisting agreements which may contain a non-formula rate structure, or the application of such agreements to all parties in order to meet a most favored nation obligation.

Likewise, a requirement to publish rates, as suggested by WorldCom,[115] is unnecessary and duplicative because Section 1.1404 of the Commission's rules already requires utilities to furnish the data and information substantiating the utility's pole attachment rates. Thus, utilities are already required to furnish rate information upon request.

The Commission should reject other suggestions that are beyond the scope of this proceeding, such as requests to clarify access obligations imposed by the Local Competition

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[114] See 1987 Report and Order, ¶76 (recognizing that rate differential was permissible when the terms and conditions were different); Adoption of Rules for the Regulation of Cable Television Pole Attachments, CC Docket No. 78-144, 68 F.C.C.2d 1585, 1593 ¶24 (1978)("[D]ifference in rates is not alone a proper basis for a complaint . . ..").

[115] Id. at 6.

Order.[116]

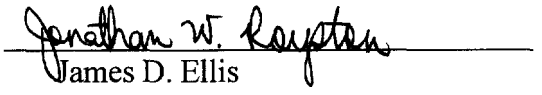
XVI. CONCLUSION.

SBC respectfully requests that the Commission promptly adopt changes to its pole attachment rules consistent with SBC's Comments and Reply Comments in order to permit utilities like SWBT to issue new 1998 rates early in the fourth quarter of this year.

[116] See e.g., American Electric at 7 (authority over wireless attachments); AT&T at 7-9 (feasibility of wireless and other attachments).

Respectfully Submitted,

SBC COMMUNICATIONS INC.

By 

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ATTORNEYS FOR SOUTHWESTERN BELL
TELEPHONE COMPANY

August 11, 1997

EXHIBIT "A"

ADMINISTRATIVE EXPENSES - EXISTING FORMULA:

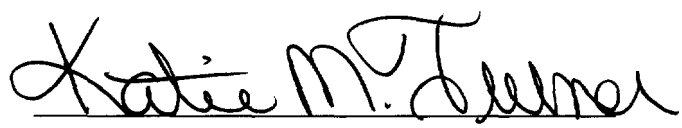
ACCOUNT	KANSAS 1996 EXPENSE DOLLARS
6710 Executive & Planning	$ 4,588,000
6720 General & Administrative	$ 68,583,000
6535-685 Engineering	$ 13,695,000
Total Plant Rents	$ 6,079,243
Benefits	$ 26,796,290
TOTAL	$119,741,533

ADMINISTRATIVE EXPENSES - PROPOSED FORMULA:

ACCOUNT	KANSAS 1996 EXPENSE DOLLARS
6710 Executive & Planning	$ 4,588,000
6720 General & Administrative	$ 68,583,000
6535-685 Engineering	$ 13,695,000
6534-675 Plant Operations Admin.	$ 19,702,000
6110 Network Support	$ 647,000
6120 General Support	$ 47,681,000
TOTAL	$154,896,000

CERTIFICATE OF SERVICE

I, Katie M. Turner, hereby certify that the foregoing, "REPLY COMMENTS OF SBC COMMUNICATIONS, INC." in CS Docket No. 97-98 has been filed this 11th day of August, 1997 to the Parties of Record.



Katie M. Turner

August 11, 1997

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